In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 548

SNOHOMISH COUNTY, A MUNICIPAL CORPORATION,
PETITIONER

v.

SEATTLE DISPOSAL COMPANY AND THE TULALIP
TRIBES, A FEDERAL CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MEMORANDUM FOR THE UNITED STATES

This memorandum is submitted in response to the Court's order of November 6, 1967, inviting the Solicitor General to express the views of the United States in this case.

The petitioner, Snohomish County, sought to enjoin the Seattle Disposal Company from conducting a garbage disposal operation on certain lands leased from the Tulalip Tribes, without first obtaining a conditional use permit from the County pursuant to its zoning ordinance (Pet. B25). The Tulalip Tribes, a federal corporation, intervened. The trial court dismissed the suit (Pet. A1–3) on the ground that the

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State of Washington and its governmental agencies have no jurisdiction over the use of the land in question and that the County's zoning ordinance, if applied to the subject lands, would constitute an encumbrance in violation of 28 U.S.C. 1360 (Pet. B4) and the corresponding State law, R.C.W. 37.12.060 (Pet. B13).[1] The Supreme Court of the State of Washington affirmed (Pet. A4–10).

Prior to 1953, States lacked jurisdiction over lands, such as those here involved, held by Indian tribes under restrictions against alienation.[2] In that year, however, by Public Law 280 (Pet. B5–9, now codified as 18 U.S.C. 1162 and 28 U.S.C. 1360), Congress consented to State assumption of general civil and criminal jurisdiction, subject to stated limitations. The State of Washington accepted the invitation in 1963 (Chapter 37.12 R.C.W., Pet. B11–14) and State laws now generally apply within the Tulalip Indian Reser-

[1] Because the opinion of the Washington Supreme Court cites, interchangeably, the identically-worded federal and State statutes and invokes both federal and State decisions, a question arises whether its judgment rests on an independent State law ground. Cf. *Jankovich* v. *Toll Road Comm'n*, 379 U.S. 487. In our view, however, the court below construed the State law—if at all—merely as an exact reflection of Public Law 280, which is the earlier and controlling provision. Accordingly, we believe this Court has jurisdiction to review the case. *Id.* at 492.

[2] The substance of the federal restrictions is the same, whether in the form of a trust or a fee subject to restrictions. *Minnesota* v. *United States*, 305 U.S. 382, 388. Petitioner has raised a question whether the two parcels here involved are so restricted. We believe the Supreme Court of Washington has correctly and adequately disposed of this contention (see Pet. A7). At all events, relating as it does simply to these two particular tracts, that issue does not warrant review by this Court.

vation.[2] But, under both the federal statute and its State counterpart, local authorities may not "encumber" restricted Indian lands or "regulate [their] use * * * in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto." 28 U.S.C. 1360(b) (Pet. B5); R.C.W. 37.12.060 (Pet. B13). The question here is whether the Snohomish County ordinance conditioning garbage disposal operations, if applied to the Indian lands in suit, would constitute an impermissible "encumbrance" or a "use regulation" inconsistent with federal law.

We believe the court below correctly answered in the affirmative. As the State court suggested, the local zoning restriction may well be inapplicable as an "encumbrance" on Indian lands. But, at all events, the ordinance plainly constitutes a "regulation of the use" of property inconsistent with pertinent federal regulations. The general provisions of federal law cited by respondent to one side (Br. in Opp. 8), the dispositive federal regulation (not cited in the papers filed here) is 25 C.F.R. 1.4:

> (a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or

[2] Jurisdiction over Indian country in the State of Washington was not automatically ceded by Public Law 280; the State assumed jurisdiction over the Tulalip Reservation pursuant to the consent given by Section 7 of the Act (Pet. B9) on the request of the Tribe, as prescribed by its own law (R.C.W. 37.12.021, Pet. B12).

> controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.
>
> (b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

Since the Secretary of the Interior has not adopted the county zoning ordinance invoked here, it cannot—consistently with the quoted regulation—be applied to the lands in suit, under lease to the Seattle Disposal Company.

We note that this result is fully consistent with Public Law 280, the central purpose of which was to cede to the States general jurisdiction over *persons*

living on Indian reservations without, however, permitting local authorities to tax, encumber or otherwise diminish the value of restricted Indian lands. See H. Rep. No. 848, 83d Cong., 1st Sess., p. 5. As the regulation just quoted makes clear, the Department of the Interior has retained power to borrow appropriate restrictions on land use from State law when that is called for. At all events, the ruling here does not prejudice the question whether local authorities have power to abate an actual nuisance on reservation lands. The lease granted by the Tribes contains detailed protective conditions (Pet. B18–25) and there is no allegation that the operations of the Disposal Company constitute a hazard or inconvenience to non-Indian property in the county.

Believing that the decision of the Washington Supreme Court is plainly correct and that the question presented is of limited practical importance, we suggest that review in this Court is not warranted.

Respectfully submitted.

ERWIN N. GRISWALD,
Solicitor General.

DECEMBER 1967.

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